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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 Plaintiff's Motion for Leave to File an Amended Complaint (Dkt. 61, the "Motion") is his
 2 latest attempt to delay the resolution of Google's pending Motion to Dismiss and to Declare
 3 Plaintiff a Vexatious Litigant (Dkt. 31) and to improperly supplement his argument against
 4 Google's fair use defense. Google's Motion to Dismiss argues that the allegedly infringing
 5 "channel icon" at issue in this case is a non-infringing fair use of Plaintiff's copyrighted
 6 "Livestream" under Section 107 of the Copyright Act (17 U.S.C. § 107). That motion is fully
 7 briefed and the Court took it under submission on June 9, 2023, after the parties agreed that it was
 8 ripe for resolution on the papers. Dkt. 58. Plaintiff recently filed a notice asking this Court to
 9 "bring the case current" by ruling on the Motion to Dismiss. Dkt. 60.

10 Plaintiff now seeks leave to file a Proposed Amended Complaint, which by his own
 11 admission is primarily an unauthorized sur-reply to Google's Motion to Dismiss. *See* Dkt. 61-1.
 12 The bulk of the so-called "complaint" (**85 paragraphs**) is dedicated to (misguided) legal arguments
 13 over why Plaintiff believes the at-issue channel icon is not fair use. *Id.* ¶¶ 70-155. If there were
 14 any doubt as to the true purpose of this document, Plaintiff makes it clear in his Motion, insisting
 15 that the arguments therein "absolutely need to be considered when adjudicating the defendant's
 16 Motion to Dismiss on the grounds of 'obvious fair use.'" Dkt. 61 ¶ 4. This Court previously
 17 rejected Plaintiff's attempt to disguise an "unauthorized sur-reply" to Google's Motion to Dismiss
 18 as a summary judgment motion (Dkt. 52). This latest gambit should likewise be rejected as a
 19 violation of Civil Local Rule 7-3(d) ("Once a reply is filed, no additional memoranda, papers or
 20 letters may be filed without prior Court approval"). Plaintiff's Motion for Leave is another
 21 example of the "blatant gamesmanship" and "efforts to manipulate the litigation process" that
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1 warrant declaring him a vexatious litigant in this District, as his home district has already done.¹

2 *Stebbins v. Polano*, No. 21-cv-04184-JSW, Dkt. 134 at 1 (N.D. Cal. July 11, 2022).

3 As to the new copyright claims and allegations included in the Proposed Amended
 4 Complaint—which suffer from serious pleading deficiencies—they concern different alleged
 5 copyrighted works and different instances of alleged infringements. They have no bearing on
 6 whether the allegedly infringing channel icon described in the operative complaint is a fair use.
 7 Additionally, if Google’s Motion is granted and Plaintiff is declared a vexatious litigant, the scope
 8 of that sanction and any pre-filing screening order would necessarily inform the extent to which
 9 Plaintiff can assert his new infringement claims. *See* Motion to Dismiss at 24-25.

11 Further, given Google’s pending Motion to Dismiss, it would be unduly prejudicial to send
 12 this case back to square one by requiring Google to respond to a Proposed Amended Complaint
 13 that largely seeks to relitigate the same alleged channel icon infringement and fair use defense.
 14 This is particularly so given that the Motion to Dismiss is already fully briefed and under
 15 submission, and Google has been forced to expend significant time and resources responding to
 16 numerous frivolous motions related to it (*see* n.1). *See, e.g., Steinmeyer v. Lab’y Corp. of Am.*
 17 *Holdings*, No. 22-cv-01213-DMS, 2023 WL 2994115, at *2 (S.D. Cal. Apr. 17, 2023)
 18 (“[D]efendants have moved to dismiss and their motions are now fully briefed and under
 19 submission. It would unduly prejudice ... Defendants to allow Plaintiff to file an amended
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 24 ¹ Plaintiff has sought to derail a ruling on Google’s Motion to Dismiss since the inception of this
 25 case. Before Google even filed the motion, Plaintiff filed an ex parte motion for a protective order
 26 to “protect [him] from having to litigate” against arguments that he “fear[ed]” Google’s counsel
 27 would make in its motion. Dkt. 11 at 1, *denied* at Dkt. 54. Then he filed a procedurally-invalid
 28 motion to strike Google’s Motion to Dismiss (Dkt. 32), which technically remains pending (Dkt.
 58). He also filed a motion for an indefinite extension of time to respond to the Motion to Dismiss
 (Dkt. 24), which the Court denied for lack of good cause (Dkt. 35). And he filed an improper
 Motion for Partial Summary Judgment which sought to preempt Google’s Motion to Dismiss by
 asking this Court to declare foundational elements of the fair use analysis “entirely irrelevant” to
 the inquiry. Dkt. 49.

1 complaint at this stage and would cause Defendants to accrue additional cost to defend against the
 2 new complaint. It would also unduly delay the resolution of this matter.”).

3 For these reasons, Plaintiff’s Motion for Leave should be denied. At a minimum, Google’s
 4 Motion to Dismiss and to Declare Plaintiff a Vexatious Litigant should be decided before this
 5 Court takes up Plaintiff’s Motion for Leave or determines whether Plaintiff should be permitted to
 6 file an amended complaint in this case.²

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 9 Dated: July 31, 2023

10 Respectfully submitted,

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² Any amended complaint would also need to be screened under the *in forma pauperis* statute, which provides that a court “shall” dismiss a complaint under 28 U.S.C. § 1915(e)(2)(B) if it determines the complaint is frivolous or fails to state a claim, and need not “accept without question the truth of [P]laintiff’s allegations.” *Denton v. Hernandez*, 504 U.S. 25, 32 (1992), superseded by statute on other grounds as recognized in *Walp v. Scott*, 115 F.3d 308, 309 (5th Cir. 1997) (explaining that 1996 amendment to IFP statute “removes some of a federal court’s discretion by requiring the court to dismiss a case if it determines that the action or appeal is frivolous, malicious, or fails to state a claim upon which relief may be granted”) (emphasis added).